IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 49 OF 2006

State
Through Central Bureau
Of Investigation, Anti
Corruption Branch having
Office at Surekha Building,
1st Floor Near Doordashan,
Kendra Altinho, Panaji-Goa. ... Applicant

versus

1. Shri Parmeshwaran Subramani
S/o Late L.P.Aiyer,
Commissioner of Central Excise
And Custom Bangalore
R/07/1/Cambell Cross Road
Vivek Nagar, Bangalore 560047.

2. Shri Dharmendra Gautam
Inspector of Central Excise,
Goa Rahimpur District,
Patna, Bihar, 803211. ... Respondents

Mr. S. Bhattacharya, Special Public Prosecutor for the Applicant.

Mr. A. N. S. Nadkarni with Mr. D. Lawande, Advocates for the Respondent No.1.

Mr. M. S. Sonak, Advocate for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 23RD NOIVEMBER, 2006.

ORAL ORDER

This revision is directed against Order dated 6-1-2006 of the learned Special Judge, Panaji.

2. The applicant had prosecuted both the accused with an allegation that they had conspired together and had offered a bribe of Rs.1,00,000/- to Shri Yadav, Police Inspector, CBI,ACB, Goa to hush up an inquiry which he was conducting at the relevant time against respondent/A-1. The accused were prosecuted under Section 120-B I.P.C. and Section 12 of the Prevention of Corruption Act, 1988(Act, for short).

3. At the relevant time, the respondent/A-1 was working as Additional Commissioner of Central Excise and was expecting a promotion and he had feared that the said inquiry might come in the way of his promotion. Respondent/A-2 was the Inspector of Central Excise through whom the said bribe was allegedly offered. As far as prima facie facts go, the same have been

held as proved by the learned Special Judge. However, the respondents/accused came to be discharged on the ground that the applicant/complainant had prosecuted the respondent/accused without sanction as required under Section 19 of the Act.

4. Section 12 of the Act provides for punishment for abetment of offences defined in Section 7 or 11. It provides that whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine. Section 19 deals with previous sanction which is necessary for prosecution and the relevant portion of sub-section(1), which is relevant to our case, provides that no Court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

> (a) in the case of a person who is employed in connection with the affairs of the Union and is not

removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of the State and is not removal from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

5. The applicant's contention is that in case previous sanction to prosecute a person under Section 12 was necessary, Section 19 would have specifically said so and since Section 19 makes no reference to Section 12 of the Act and is otherwise silent as regards Section 12, no previous sanction is necessary to prosecute a person under Section 12 of the Act.

6. The answer is that since Section 12 deals with only abetment of offences under Section 7 or 11 and since for Sections 7 or 11 previous sanction is necessary, impliedly

previous sanction would also be necessary for the abetment of the said offences.

7. The learned Special Judge has come to the conclusion that previous sanction was necessary for prosecution under Section 12 of the Act and this the learned Special Judge has decided based on a decision of this Court in the case of **Sharad Waman Buchake** v. **State of Maharashtra**(1993 Mh.L.J. 284).

8. What I have stated by way of answer to the contention raised had been stated by this Court elaborately in the following words:-

> "Undoubtedly, Section 12 makes an offence of abetment punishable and it is competent for a Court to frame a charge under Section 12 independently or along with any other charges under the Act. What one cannot however overlook is that it is impermissible to argue that the offence described in Section 12 though independently punishable is an independent offence in the sense that it does not stand apart, from the other offences enlisted under the Act. A plain reading of Section 12

will indicate that there is a direct reference to Sections 7 and 11 and it is in respect of the abetment of these two offences that Section 12 speaks of. To that extent, therefore, while I uphold the submission of Mr. Lambay that it is permissible to independently charge an accused under Section 12 of the Act, it is necessary for me to also qualify that this offence cannot be treated as being wholly distinct or independent from Sections 7 and 11 because it speaks of abetment of those offences. In other words, the offence under Section 12 does not have a distinct existence from Sections 7 and 11. It was to my mind therefore unnecessary for the Legislature to specifically mention Section 12 and Section 19 while enumerating the necessity of sanction as a precondition. As long as sanction is required for punishment of the main offence namely the ones under Section 7 or 11 sanction would be equally necessary in respect of the punishment of an offence described in Section 7 namely abetment of those offences. To this extent, therefore, the submissions canvassed by Mr. Lambay, learned Counsel appearing for the State that sanction is unnecessary for the offence under Section 12 is incorrect".

9. The next contention is that the view expressed by the learned Single Judge in the above decision is not a sound view. I have my respectful agreement with the view expressed by the learned Single Judge in the case of **Sharad Waman Buchake** v. **State of Maharashtra**(supra). The contention that for a prosecution under Section 12 no sanction is necessary because Section 19 is silent about it therefore cannot be accepted.

10. In the view of the above, the discharge of the accused for want of sanction under Section 19 of the Act could not be faulted. The petition is therefore hereby dismissed.

N. A. BRITTO, J.

RD